

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DIRECTV, INC.

Plaintiff,

v.

ORDER
04-CV-217S

EDDIE GOZDALSKI,

Defendant.

1. Plaintiff instituted this action on May 22, 2003, alleging that the named defendants purchased, received and used various devices to illegally intercept its satellite television services.¹ This Court referred this matter to the Honorable Hugh B. Scott, United States Magistrate Judge, on March 24, 2005, for purposes of filing a Report and Recommendation on Plaintiff's Motion to Strike Defendant's Answer.

2. On April 29, 2005, Judge Scott filed a Report and Recommendation recommending that Plaintiff's Motion to Strike Defendant's Answer pursuant to Rule 37 be granted and that Defendant's Answer be stricken.

3. No objections to the Report and Recommendation were received from either party within ten (10) days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3). On June 1, 2005, Plaintiff filed a Motion for an Order Adopting Judge Scott's Report and Recommendation.

4. This Court has reviewed this case *de novo* and finds that it cannot accept Judge Scott's Report and Recommendation. Judge Scott recommends that Plaintiff's

¹Defendant was originally sued in a case captioned DirectTV, Inc. v. James Koncewicz, et al., 03-CV-396S. The instant case was created after this Court's severance order.

Motion to Strike Defendant's Answer be granted. However, review of the docket reveals that Defendant never filed an Answer in this case. Accordingly, there is no Answer to strike.

IT HEREBY IS ORDERED, that this Court does not accept Judge Scott's April 29, 2005 Report and Recommendation (Docket No. 19).

FURTHER, that Plaintiff's Motion to Strike Defendant's Answer (Docket No. 13) is DENIED.

FURTHER, that Plaintiff's Motion for an Order Adopting Judge Scott's Report and Recommendation (Docket No. 24) is DENIED.

SO ORDERED.

Dated: September 27, 2005
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge